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International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

List of issues prior to submission of the initial report of Indonesia*

Section I

A. General information

1. Please provide information on the domestic legal framework regarding the Convention, including:

(a) The rank of the Convention in national law and whether the Convention has a direct effect or is part of national law through implementing legislation;

(b) Information on the relevant national legislation of the State party regarding the protection of migrant workers and members of their families under the Convention, including Law No. 39/2004 Concerning the Placement and Protection of Indonesian Overseas Workers and its implementing regulations, Law 21/2007 against the Trafficking of Migrant Workers and Government Regulation 3/2013, regarding the Protection of Indonesian Migrant Workers Abroad;

(c) Measures taken by the State party to harmonize its legislation with the provisions of the Convention;

(d) The existence and scope of bilateral and multilateral agreements with other countries concerning the rights of migrant workers and members of their families under the Convention, in particular agreements with Bahrain, Kuwait, Malaysia, Saudi Arabia and Singapore. Please specify how those agreements protect the rights and guarantees of migrant workers in transit and destination countries, in particular with respect to detention, repatriation, expulsion and family reunification procedures. Please provide information on measures taken to strengthen the protection of Indonesian migrant workers abroad, including by reviewing and amending bilateral and multilateral agreements and through legislative measures, such as Ministerial Decree No. 260/2015 concerning the banning of the placement of Indonesian overseas workers with individual employers in Middle Eastern countries.

* Adopted by the Committee at its twenty-fourth session (11-22 April 2016).

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2. Please provide information on all policies and strategies relating to the rights of migrant workers and members of their families adopted by the State party, including information on specific, time-bound and measurable goals and targets to effectively monitor progress in the implementation of the rights of migrant workers and members of their families in the State party. Please also provide information on resources allocated for implementation and the results obtained.

3. Please provide information on the government ministry or institution responsible for intergovernmental coordination on the implementation of the Convention in the State party, including information on the available staffing and resources, as well as monitoring activities and follow-up procedures. Please provide information on the mandate of that ministry or institution and the resources allocated to it for promoting, protecting and fulfilling the rights of migrant workers and members of their families under the Convention.

4. Please provide qualitative information and statistical data, disaggregated by sex, age, nationality and migration status, on labour migration flows to and out of the State party, including returns, on other labour migration-related issues and on children left behind by migrant parents. Please also provide qualitative and statistical data, or if precise data are not available, then studies or estimates, on migrant workers in an irregular situation in the State party and on Indonesian migrant workers abroad, in particular those working in less regulated sectors such as domestic work. Please additionally provide information on measures taken by the State party to establish a coherent and comparable system of data collection on those issues, including measures aimed at making the information public.

5. Please provide detailed information on the mandate of the National Commission on Human Rights of Indonesia. In particular, please indicate whether the Commission has been established in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and has the explicit mandate of independently monitoring the human rights situation within the State party, including the rights of all migrant workers and members of their families under the Convention. Please also provide information on complaints mechanisms and other services, including helplines, offered by the Commission and whether it conducts visits at detention centres and shelters for Indonesian migrants following repatriation from countries of employment or transit. Please additionally provide information on the human, technical and financial resources made available to the institution and on awareness-raising activities by the State party among the general public and migrant workers, in both urban and rural areas, in particular on the services offered by the institution, including the right to file a complaint directly with it.

6. Please provide information on the steps taken by the State party to promote and publicize the Convention and to increase awareness and understanding of its provisions among the general public, migrant workers and members of their families, employers, teachers, health workers, government officials, including embassy and consulate personnel, law enforcement officials, border police and the judiciary, civil society and the media. Please indicate whether the media engages in the promotion of the Convention and, if so, what is the impact of this on the situation of migrant workers coming to and departing from Indonesia.

7. With respect to migrant workers who are nationals of the State party working abroad, please describe measures taken by the State party to promote training programmes on the human rights of migrant workers and members of their families, including on gender sensitivity and the rights of the child, for government officials providing legal and consular assistance to nationals of the State party abroad dealing with migration and related issues, including workplace abuse and exploitation and discrimination faced by migrant workers. Please also describe the measures taken to promote training programmes on the human

rights of migrant workers or members of their families who have been arrested, held in prison or in detention centres, placed in custody pending trial or detained in any other manner, or are subject to expulsion or repatriation.

8. Please provide information on the cooperation and interaction between the State party, civil society organizations and other social partners working on the rights of migrant workers in relation to the implementation of the Convention. Please indicate whether and how the representatives of civil society organizations and other stakeholders are involved in preparing the replies to the present list of questions.

9. Please provide information on the existence of private employment agencies in the State party recruiting migrant workers to work abroad and on the laws and regulations pertaining to such recruitment, in particular:

(a) Measures taken to provide information and training to migrant workers about their rights and obligations and to protect them against abusive employment situations;

(b) The role and responsibilities of recruitment agencies and their possible joint responsibility with the employer for claims and liabilities that may arise in connection with the implementation of the employment contract, including wages, disability compensation, repatriation and death, including repatriation of the bodies of deceased migrant workers;

(c) Whether recruitment and placement agencies provide insurance to migrant workers to cover loss of life, disability and financial assistance proximately caused by accidental bodily injury;

(d) Information relating to the issuing and renewal of the licences of such employment agencies;

(e) Information on complaints lodged against employment agencies and information on labour inspections conducted and penalties and sanctions imposed in cases of non-compliance with the law;

(f) Measures taken by the State party to strengthen mechanisms to regulate and control private employment agencies and to avoid situations where those agencies act as intermediaries for abusive foreign recruiters.

B. Information relating to the articles of the Convention

1. General principles

10. Please indicate whether the Convention has been directly applied by officials in the administration and whether it has been invoked directly before the courts. If so, please provide examples. Please also provide information on:

(a) Judicial and administrative entities competent to examine and decide on complaints by migrant workers and members of their families, including migrant workers in an irregular situation, in particular migrant domestic workers;

(b) The number and type of complaints examined by such entities in the past five years and their outcome, disaggregated by sex;

(c) Whether legal assistance was provided;

(d) Any redress, including compensation, provided to victims of such violations;

(e) Any measures taken to inform migrant workers and members of their families about the remedies available to them for violations of their rights.

2. Part II of the Convention

Article 7

11. Please clarify whether national legislation, in particular the Constitution of Indonesia, ensures that all migrant workers and members of their families enjoy the rights provided for in the Convention without distinction of any kind and whether the legislation covers all the prohibited grounds of discrimination enumerated in the Convention (arts. 1 (1) and 7), including sex, language, national, ethnic or social origin, nationality, age, economic position, property, marital status and birth or other status. Please also provide information on all the measures taken by the State party to ensure non-discrimination, both in law and in practice.

12. Please inform the Committee of any cases identified in the State party of racism and xenophobia, discrimination, ill-treatment and violence directed at migrant workers and members of their families and provide information about normative, institutional and procedural measures adopted by the State party to prevent and combat all forms of racism, xenophobia, discrimination, ill-treatment and violence to protect the rights of the victims, including their right to access to justice. Please include quantitative and qualitative information on the types of discrimination and on xenophobic cases identified in the State party. Please additionally provide information about such cases brought against Indonesian migrant workers abroad and the measures taken by the State party, if any, in response.

3. Part III of the Convention

Articles 8-15

13. Please provide information on any cases identified in the State party of exploitation of migrant workers and members of their families, in both regular and irregular situations, in particular those working in agriculture, domestic work and construction, as well as hazardous work. Please also provide information on any cases identified in the State party of domestic servitude, debt bondage, forced labour and sexual exploitation involving migrant workers, especially in the context of sex tourism, in particular as regards women and children, and on measures to prevent and combat those phenomena. Please additionally provide information on the measures taken to bring the national legislation into compliance with the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29), and the ILO Abolition of Forced Labour Convention, 1957 (No. 105).

14. Please provide detailed information on the measures taken to investigate allegations of harassment, corruption and abuse of authority by law enforcement officials, including allegations of extortion and arbitrary detention, with regard to migrant workers and members of their families. Please indicate the number of law enforcement officials who have been investigated, prosecuted and convicted in that regard and specify the nature of the charges and sentences imposed.

Articles 16-22

15. Please describe the due process safeguards that exist in situations of investigation, arrest, detention and expulsion of migrant workers and members of their families for criminal offences and administrative infractions, including immigration-related matters. Please describe measures taken to ensure that the obligation contained in article 16 (7) of the Convention on contact with consular or diplomatic authorities of the State of origin of the detained migrant worker or members of their families is given effect in law and in practice. Please include information on specific due process safeguards for unaccompanied children in migration-related administrative procedures, including the right to be heard and the right to a guardian.

16. Please indicate legislative and other measures taken by the State party to ensure the right to liberty of migrant workers and their families in the context of migration administrative procedures, including entry, residence and expulsion. Please provide information, including statistical data, on alternatives to detention for immigration-related matters existing in the State party. Please also indicate if the State party detains migrant workers and members of their families for immigration-related matters. If so, please provide detailed information on migration detention centres, conditions of detention for migrant workers and members of their families and the efforts made to improve those conditions, and indicate which authorities are responsible for the management of immigration detention facilities. Please also include information on whether:

(a) Persons detained for immigration reasons are held in separate facilities or together with convicted persons or persons detained pending trial;

(b) Women detained for immigration reasons are held separately from men who are not family members or partners and are supervised by female personnel;

(c) Specific alternatives to detention exist for unaccompanied children and families with children;

(d) Unaccompanied children and families with children can be detained for immigration-related matters and if so, please provide detailed information on the facilities where they are detained and the conditions of such facilities, including child-protection measures in place and the authorities in charge of such facilities, as well as data disaggregated by sex, age, nationality and length of stay.

17. Please provide information on measures taken to ensure that in criminal and administrative proceedings, including expulsion proceedings, migrant workers and members of their families, in particular those in an irregular situation are provided with legal assistance and interpretation, as necessary, and that they have access to information in a language they understand. Please provide information on measures taken to ensure that migrant workers and members of their families are only expelled from the territory of the State party pursuant to a decision taken by a competent authority, following a procedure established by law and in conformity with the Convention, and that this decision can be reviewed on appeal. Please provide up-to-date information, including disaggregated statistical data, on migrant workers and their families who are undocumented or in an irregular situation and have been, or are in the process of being, expelled.

Article 23

18. Please provide detailed information on the roles of the State party's embassies and consulates in assisting and protecting migrant workers who are nationals of the State party working abroad, including those in an irregular situation, and particularly in the case of abuse, arrest, death penalty charges, detention and expulsion. Please indicate whether legal assistance is provided whenever the rights recognized in the Convention are violated, including in cases of detention and expulsion cases.

Articles 25-30

19. Please indicate what legal and labour protection and enforcement mechanisms are in place to ensure that migrant workers, including migrant women, especially in the agricultural, construction, domestic, food, personal services, repair services and transport sectors, enjoy treatment no less favourable than that which applies to nationals in respect of remuneration and conditions of work. Please also include information on measures aimed at promoting the rights of migrant workers who are nationals of the State party, abroad, including migrant domestic workers. Please provide information on access, equal to that of nationals, regarding health care and other social services for migrant workers and members

of their families both in a regular and irregular situation, as well as education for children of migrant workers in a regular and irregular situation.

20. Please indicate whether national labour laws and regulations relating to remuneration and conditions of work (for example, overtime, hours of work, weekly rest, paid leave, social security, health, termination of the employment contract, and minimum wage), are in full compliance with the ILO Equal Remuneration Convention, 1951 (No. 100) and the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and whether they apply on an equal basis with migrant workers, in both regular and irregular situations.

21. Please provide information on the measures taken by the State party to ensure the right of children of migrant workers abroad, including children of migrant workers who are undocumented or in an irregular situation, to be registered at birth and to have their nationality of origin recognized in law and in practice. Please also provide information on the measures taken to ensure that births of foreign migrant children are registered in the State party.

22. Please provide information on the measures taken to ensure that children of migrant workers have full access to education, regardless of their migration status. Please also provide information on the measures taken by the State party to ensure, in law and practice, that all migrant workers and members of their families have adequate access to basic services, such as medical care, including urgent medical care.

Articles 31-33

23. Please provide information on measures taken by the State party to ensure that upon termination of their stay in the State party, migrant workers and members of their families have the right to transfer their earnings and savings and, in accordance with the applicable legislation, their personal effects and belongings. Please also provide information on the measures taken to facilitate the transfer of those private funds, in particular to reduce the cost of the transactions. Please also provide information on whether the State party has conducted any specific information and training programmes on the Convention for relevant public officials, such as law enforcement officials, embassy and consular staff, social workers, judges, prosecutors and government officials.

4. Part IV of the Convention

Article 37

24. Please provide information on pre-departure programmes for the State party's nationals considering emigration, including information on their rights and obligations in the State of employment. Please indicate which government institution is responsible for providing such information and if any coordinated policies, programmes or legislation have been developed to ensure transparency and accountability in the process.

Articles 40-41

25. Please provide information on the measures taken to guarantee migrant workers and members of their families the right to form, and be part of the leadership of, associations and trade unions, in accordance with article 40 of the Convention and with parts I and II of the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). Please also provide information on the measures taken by the State party to review its legislation and the effective implementation thereof to ensure for migrant workers and members of their families of the State party abroad:

(a) The right to participate in public affairs in the State party;

(b) The exercise of their voting rights in the State party;

(c) The right to be elected to public office in the State party.

Article 45

26. Please provide information on the measures taken by the State party to ensure access for members of the families of migrant workers to educational institutions and services, as well as vocational guidance and training institutions and services. Please also provide information on measures taken by the State party to facilitate the integration of children of migrant workers into the local school system, including teaching them the local language and facilitating the teaching of their mother tongue and culture.

Articles 46-48

27. Please provide information on the legislation relating to import and export duties and taxes in respect of personal and household effects and the necessary work-related equipment of migrant workers. Please also provide information on the policies in place to facilitate remittances. In addition, please provide information on the applicable legal framework in place to ensure the right of migrant workers to transfer their earnings and savings from the State of employment to the State of origin. Please also provide information on the bilateral and multilateral agreements concluded in the field of migration, in particular temporary labour programmes and other agreements concerning employment protection, double taxation and social security.

Article 49

28. Please provide information on measures taken to ensure that migrant workers who, in the State party, are allowed to choose freely their remunerated activity are not considered to be in an irregular situation and that they retain their residence permit if their remunerated activity ends before the expiration of their work permit or similar authorization. Please also provide information about measures taken to ensure that they are allowed to keep their residence permit at least for the period during which they may be entitled to unemployment benefits.

Articles 51-52

29. Please indicate whether the State party's legislation is in accordance with the Convention, particularly with its articles 51 and 52, in order for foreign migrant workers to be able remain in the State party upon termination of their contracts, regardless of the reason for such termination, in order to seek alternative employment, participate in public work schemes and retraining.

5. Part V of the Convention

Article 59

30. Please provide information on the measures taken by the State party to ensure that seasonal workers enjoy equal treatment with national workers, particularly in respect of remuneration and conditions of work, and to ensure systematic monitoring by the relevant authorities of employers' compliance with relevant international labour standards.

6. Part VI of the Convention

Articles 64

31. Please provide information on the measures taken to address irregular migration of nationals of the State party, in particular women and unaccompanied children, including through multilateral and bilateral agreements, policies and programmes aimed at enhancing legal migration channels and addressing the root causes of irregular migration. Please include information on how such measures have been mainstreamed in overall migration policies and programmes and whether there has been a reduction in the number of irregular migrants as a result of such measures.

Article 67

32. Please provide information on the measures taken to assist returning migrant workers and members of their families in resettlement and reintegration into the economic and social life of the State party, including the Business Empowerment for Former Indonesian Labour Migrants Programme. Please provide information on measures taken by the State party to ensure the rights of migrant children and their protection from all forms of exploitation, particularly those unaccompanied and/or in an irregular situation, in or in transit through the State party, including the allocation of sufficient resources for the effective enforcement of labour laws. Please provide information on the steps taken to protect children from hazardous work, including through the implementation of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) and the strengthening of the labour inspection system.

Article 68

33. Please provide information on the measures taken to intensify and allocate adequate financial and other resources to prevention campaigns aimed at countering misleading information relating to emigration and raising awareness among its nationals, including unaccompanied children, about the dangers of irregular migration. Please also provide information on cooperation efforts with countries of transit and destination, with a view to ensuring the safety of the State party's migrant workers abroad, including migrant children, whether accompanied or not, in transit through third States and upon arrival in the countries of destination.

34. Please provide information on measures taken to promote conditions that facilitate the resettlement and reintegration of migrant children who are nationals of the State party upon their return to the State party.

35. Please provide the following information relating to the trafficking in migrants:

(a) Measures taken, including through international, regional and bilateral cooperation with countries of origin, transit and destination, and corresponding human and financial resources allocated by the State party to prevent and combat trafficking in persons, in particular women and children;

(b) Measures taken by the State party to adopt specific legislation and policies to combat trafficking in persons, in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, of 2000;

(c) Measures taken to assist and protect victims of trafficking, including protecting the identity of the victims and support for the physical, psychological and social recovery of victims;

(d) Information on training programmes provided to the judiciary, law enforcement officials, border guards and social workers in all parts of the State party on how to identify victims of trafficking;

(e) Information on efforts to systematically compile disaggregated data on trafficking in persons and on bringing perpetrators of trafficking in persons to justice, including the number of reported cases of trafficking in persons, investigations, prosecutions and the sentences imposed on perpetrators.

Article 69

36. Please provide information on any measures taken to ensure that migrant workers and members of their family in an irregular situation in the State party have the possibility of regularizing their situation in accordance with the provisions of article 69 of the Convention. Please describe the actions taken by the State party, including through bilateral and multilateral agreements, to improve the protection and assistance afforded to its nationals abroad, including efforts to promote the regularization of their situation.

Section II

37. The Committee invites the State party to provide information (in no more than three pages) regarding the protection of migrant workers and members of their families with respect to the following:

(a) Bills or laws, and their respective regulations;

(b) Institutions (and their mandates) or institutional reforms;

(c) Policies, programmes and action plans covering migration, and their scope and financing;

(d) Recent ratifications of human rights instrument and other relevant instruments, including the ILO Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the Domestic Workers Convention, 2011 (No. 189);

(e) Recent comprehensive studies on the situation of migrant workers and members of their families.

Section III

Data, official estimates, statistics and other information, if available

38. Please provide, if available, updated disaggregated statistical data and qualitative information for the last three years on:

(a) The volume and nature of migratory flows to and from the State party since the Convention entered into force in the State party;

(b) Migrant workers in detention in the State party and migrant workers who are nationals of the State party detained abroad in the States of their employment, and whether such detention is immigration-related;

(c) Migrant workers who are nationals of the State party executed abroad or facing death penalty charges;

(d) Migrant workers and members of their families who have been expelled from the State party;

(e) The number of persons imprisoned or fined for unauthorized entry into or exit from the State party;

(f) The number of non-accompanied migrant children or migrant children separated from their parents in the State party;

(g) Remittances received from nationals of the State party working abroad;

(h) Reported cases of trafficking in and smuggling of migrants, investigations, prosecutions and the sentences imposed on perpetrators (disaggregated by sex, age, nationality and purpose of trafficking);

(i) Legal assistance services provided to migrant workers and members of their families in the State party and to nationals working abroad or in transit through third States.

39. Please provide any additional information on any important developments and measures to implement the Convention relating to the protection of the rights of migrant workers and members of their families that are considered a priority, including whether the State party envisages making the declaration under article 76 of the Convention recognizing the competence of the Committee to receive and consider State-to-State communications or the declaration under article 77 of the Convention recognizing the competence of the Committee to receive and consider individual communications.

40. Please submit an updated core document in line with the harmonized guidelines on reporting (HRI/CORE/IDN/2010). In accordance with General Assembly resolution 68/268, paragraph 16, the common core document should not exceed 42,400 words.

41. The Committee may take up all aspects of the rights of migrant workers and members of their families in the Convention during the dialogue with the State party.